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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LARRY R. JOHNSTON,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent - Appellee.

No. 05-70209

Tax Ct. 5380-04L

MEMORANDUM^{*}

Appeal from a Decision of the
Internal Revenue Service

Submitted November 8, 2005 ^{**}

Before: LEAVY, WALLACE, and BERZON, Circuit Judges.

Petitioner Larry Johnston appeals *pro se* from the Tax Court's summary judgment in favor of the Commissioner of Internal Revenue ("Commissioner") in his action contesting deficiencies for tax years 1993 to 1997. We have jurisdiction

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 26 U.S.C. § 7482. We review de novo, *see Talley Indus. Inc. v. Comm'r*, 116 F.3d 382, 385 (9th Cir. 1997), and we affirm.

Johnston's primary contention on appeal is that his case should be remanded for a second collection due process hearing so that he may record the hearing. Although a petitioner is entitled to record a collection due process ("CDP") hearing, 26 U.S.C. § 7521(a), a remand serves no useful purpose where a petitioner's remaining contentions are frivolous. *Keene v. Commissioner*, 121 T.C. 8, 22 (2003); *Yuen v. United States*, 290 F. Supp. 2d 1220, 1226 (D. Nev. 2003). The tax court correctly concluded that a remand is unnecessary because the petition in the instant case raised only frivolous arguments. *Kemper v. Commissioner*, 86 T.C.M. 12, 16 (2003); *see also Frey v. Commissioner*, 87 T.C.M. 1170 (2004).

Furthermore, the Tax Court properly sustained the deficiency determination based on Forms 4340 for the years in question. *See Hughes v. United States*, 953 F.2d 531, 535-36 (9th Cir. 1992).

AFFIRMED.